

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

IN RE DIAMOND FOODS, INC.,  
SECURITIES LITIGATION

Case No.: 11-cv-05386-WHA

~~PROPOSED~~ ORDER TO SHOW CAUSE

This Document Relates to:

All Actions

To: Hold Brothers On-Line Investment Services LLC  
1177 Avenue of the Americas  
Suite 2B  
New York, NY 10036  
  
525 Washington Blvd., 1400A  
Jersey City, NJ 07310

On September 26, 2013, this Court issued its Preliminary Approval Order of the proposed settlement in the above captioned matter, setting the Final Approval Hearing for January 9, 2014, and requiring, among other things, that brokers and custodians who held Diamond common stock on behalf of clients submit a letter confirming that they have either provided the Notice of Proposed Settlement to their clients or provided the Claims Administrator with a mailing list of these clients to Class Counsel. Hold Brothers was

1 identified in the records of the Depository Trust Clearing Corporation as a nominee that  
2 held Diamond stock during the Class Period (October 5, 2010 through February 8, 2012),  
3 potentially on behalf of clients. Plaintiff has represented to the Court that Hold Brothers  
4 was sent the Notice, as well as letters and email communications from Class Counsel  
5 concerning its obligation to submit the required broker letter, and was provided a form  
6 letter of compliance to complete, but it has not responded. Additionally, Plaintiff has  
7 represented that it contacted Hold Brothers by mail and email on several occasions as  
8 described in the Declaration of Krissi T. Gore of Class Counsel's Compliance with May  
9 31, 2013 Order Re Form and Manner of Class Notice dated August 21, 2013 [ECF 273],  
10 the Declaration of Krissi T. Gore Regarding Broker Compliance dated November 26,  
11 2013 [ECF 299-2], and the Supplemental Declaration of Krissi T. Gore Regarding Broker  
12 Compliance dated December 30, 2013 [ECF 301-2], which were filed in connection with  
13 the settlement of this Action, and that these efforts have continued through January 13,  
14 2014.

15  
16 The Court conducted the Final Approval Hearing on January 9, 2014, and issued  
17 the Order Granting Final Approval of the Proposed Class Settlement on January 10, 2014.  
18 Because Hold Brothers did not submit the required broker compliance letter, the Court is  
19 concerned that Hold Brothers' clients who purchased Diamond common stock during the  
20 Class Period did not or will not have sufficient opportunity to submit a claim to receive  
21 their appropriate share of the settlement consideration. In the event that Hold Brothers did  
22 not distribute the Notice of Proposed Settlement to its clients by November 20, 2013, the  
23 time for its clients to submit a claim will be extended from the existing deadline of  
24 February 28,  
25 January 9, 2014, which has already passed, to ~~February 15, 2014~~.  
26

27 Accordingly, having considered the circumstances described above, NOW,  
28 THEREFORE,

IT IS ORDERED that Hold Brothers is to appear and demonstrate why it should not be held in contempt for failing to respond to Class Counsel's notice and instructions regarding this Court's Orders. Hold Brothers may file a responsive brief in this Court no later than January 27, 2014 at noon and serve it on all parties by the same date and time. This brief shall set forth the reasons why Hold Brothers has not submitted the required broker letter demonstrating that it distributed the Notice of Proposed Settlement to any clients who purchased Diamond common stock during the Class Period, or in the alternative, provided the names and addresses of such clients to the Claims Administrator in accordance with the Notice that was distributed on October 1, 2013. The parties may file any replies thereto on or before January 29, 2014, at noon. A hearing to consider the responses and to determine whether Hold Brothers should be held in contempt, is scheduled for ~~January 30,~~ February 6, 2014, at 1:00 p.m.

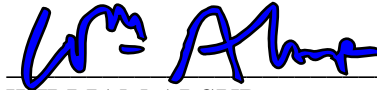
IT IS FURTHER ORDERED that Hold Brothers identify the date on which it distributed the Notice of Proposed Settlement to its clients who purchased Diamond common stock during the Class Period, if applicable, and, if the date of distribution of the Notice was later than November 20, 2013, that the time for its clients to submit a Claim to the Claims Administrator is extended to ~~February 15,~~ February 28, 2014. Hold Brothers shall give appropriate notice of the extension of time to file a Claim set forth above, and confirm to this Court that it has done so. Hold Brothers may be relieved of its obligation to appear on ~~January 30,~~ February 6, 2014 to show cause only if it provides to Class Counsel [Meryl W. Roper, Chitwood Harley Harnes LLP, 1230 Peachtree Street, NE, Suite 2300, Atlanta, GA 30309, (404) 873-3900, mroper@chitwoodlaw.com], on or before that date, the required broker compliance letter or a statement confirming that it did not hold Diamond common stock on behalf of any clients during the Class Period; and

IT IS FURTHER ORDERED that Class Counsel serve this Order to Show Cause

1 personally, if possible, as well as by overnight delivery.

2 IT IS SO ORDERED.

3  
4 Dated: January 14, 2014.

5 

6 WILLIAM ALSUP  
7 UNITED STATES DISTRICT JUDGE  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28